

ATTACHMENT 62

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: DA VINCI SURGICAL)
ROBOT ANTITRUST LITIGATION) Case No.:
-----) 3:21-cv-03825-VC
THIS DOCUMENT RELATES TO:)
ALL CASES)
-----)
SURGICAL INSTRUMENT SERVICE)
COMPANY, INC.,)
)
Plaintiff,)
)
vs.)
)
INTUITIVE SURGICAL, INC.,)
)
Defendant.)
-----)

DEPOSITION OF:

JOHN WAGNER

TUESDAY, OCTOBER 11, 2022

9:05 a.m. Pacific Daylight Time

REPORTED BY:

Vickie Blair

CSR No. 8940, RPR-CRR

JOB NO. 5506653

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1 financial officer. 09:56:47

2 Q Before it goes to the CFO, does it need 09:56:47

3 your approval? 09:56:55

4 A Myself and our other operational 09:56:57

5 leadership will create a budget we think is presentable 09:57:02

6 to the CFO, and the CFO will approve -- or review, I 09:57:10

7 should say, and hopefully, hopefully approve. 09:57:16

8 Q The da Vinci robot, would that be subject 09:57:27

9 or run through the same overall process that you just 09:57:40

10 described? 09:57:43

11 A Yes. 09:57:45

12 Q Prior to the two Xi robots, the hospital 09:57:45

13 had an older generation robot; is that right? 09:58:03

14 A Yes. 09:58:08

15 Q That was an Si machine? 09:58:09

16 A Correct. 09:58:11

17 Q And the hospital acquired that before 09:58:11

18 you -- you joined the hospital; is that right? 09:58:13

19 A That's right. 09:58:18

20 Q Is the Si machine still at Valley? 09:58:18

21 A No. 09:58:24

22 Q And what happened to it? 09:58:24

23 A I believe it was traded in. 09:58:25

24 Q So at Valley now there's the two Xi robots 09:58:28

25 we've discussed; is that right? 09:58:43

1	A	Valley has two Xi robots, correct.	09:58:44
2	Q	So let's -- let's talk about the first Xi	09:58:47
3		robot. I believe earlier we -- we agreed that was	09:58:51
4		acquired in 2018; is that right?	09:58:54
5	A	I believe so, yes.	09:58:58
6	Q	Okay. So, Mr. Wagner, as I said earlier,	09:58:59
7		I appreciate this -- this was a while ago, but, to the	09:59:02
8		best of your recollection, who would have first	09:59:13
9		proposed purchasing an Xi robot?	09:59:14
10	A	Who would have first proposed?	09:59:22
11	Q	That's right.	09:59:23
12	A	I don't know that there was any one event,	09:59:24
13		it was an ongoing discussion when I started about	09:59:32
14		purchasing an Xi robot.	09:59:36
15	Q	And what was the nature of that	09:59:40
16		discussion?	09:59:42
17	A	The nature of that discussion primarily	09:59:42
18		was with surgeons, they were under the -- under -- we	09:59:47
19		had an understanding that the Si robot was nearing end	09:59:56
20		of life, reported to us that it was one of the oldest	09:59:58
21		in the state, in fact, I seem to recall that they had	10:00:05
22		shared with us -- they, meaning da Vinci, that it was	10:00:07
23		one of the oldest on the West Coast, and there was a	10:00:10
24		need and a desire from surgeons to want to use the Xi	10:00:13
25		robot, and so we had ongoing discussions about -- when	10:00:18

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1 This quote will have a \$250,000 Si 11:52:14
2 trade value lock for 12 months. 11:52:18
3 Do you see that? 11:52:21
4 A Yes. 11:52:21
5 Q So, consistent with what you said earlier, 11:52:21
6 Mr. Wagner, does that mean that if Valley went to trade 11:52:26
7 in its Si within the next 12 months, they would receive 11:52:30
8 a \$250,000 discount? 11:52:34
9 A I believe that's what this states. 11:52:37
10 Q All right. If you look at page five of 11:52:39
11 the PDF, so near the top, the digits in the bottom will 11:53:03
12 be 15997 -- 11:53:13
13 A Okay. 11:53:13
14 Q -- this email was attached or included in 11:53:18
15 the first email we looked at, it's from, again, John 11:53:20
16 Tull to Lindy and Jodi dated August 20th, he writes (as 11:53:23
17 read): 11:53:23
18 Per our discussion Friday morning, 11:53:28
19 attached is the SLSA draft for Valley's 11:53:30
20 review and processing. 11:53:32
21 Do you understand what the SLSA was? 11:53:36
22 A No. 11:53:42
23 Q Mr. Tull writes (as read): 11:53:43
24 As a reminder, a fully executed SLSA 11:53:53
25 is required to acquire a da Vinci system. 11:53:56

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1 I can represent to you, Mr. Wagner, that 11:53:58
2 SLSA stands for sales license and service agreement. 11:54:03
3 Does that refresh your recollection about 11:54:06
4 what this refers to? 11:54:07
5 A Yes. 11:54:11
6 Q Would reviewing the SLSA contract, is that 11:54:13
7 something that you would have done? 11:54:20
8 A I don't recall doing that for this, 11:54:25
9 usually that's something that I wouldn't. 11:54:28
10 Q That you would not, did I catch that 11:54:33
11 right? 11:54:35
12 A I would not, yes. 11:54:35
13 Q Who would typically have responsibility 11:54:36
14 for reviewing a contract like this? 11:54:38
15 A Well, all contracts are reviewed by our 11:54:46
16 legal team. 11:54:48
17 Q Besides legal, would anyone else have 11:54:48
18 reviewed the contract? 11:54:51
19 A Our supply chain team. 11:54:52
20 Q So, in this -- in this case, John Tull 11:55:00
21 from Intuitive is providing a draft of the sales 11:55:04
22 agreement to Valley to review before execution; is that 11:55:06
23 right? 11:55:17
24 A I think that's fair, yes. 11:55:17
25 Q Okay. If you go forward one page to page 11:55:19

1 six of the PDF, the digits on the bottom are 15998. 11:55:28

2 Do you see that? 11:55:35

3 A Yes. 11:55:35

4 Q This appears to be a document provided by 11:55:35

5 ECRI; is that fair? 11:55:41

6 A That's what's listed -- is listed, yes. 11:55:46

7 Q And this ECRI is the benchmarking service 11:55:48

8 that we were discussing earlier today; is that right? 11:55:51

9 A Yes. 11:55:53

10 Q If you look at the next page of that 11:55:54

11 document, the section should begin "The Bottom Line." 11:55:59

12 Do you see that? 11:56:06

13 A Yes. 11:56:06

14 Q It reads (as read): 11:56:06

15 Pricing - your facility has been 11:56:09

16 quoted the highest discount we've seen for 11:56:11

17 similar purchases of the da Vinci Xi 11:56:13

18 single console robotic system from ISI. 11:56:16

19 Do you see that? 11:56:21

20 A Yes. 11:56:21

21 Q What does that mean? 11:56:22

22 A It means that ECRI has benchmarked and 11:56:36

23 given us a recommendation. 11:56:42

24 Q So ECRI is saying that the deal on the 11:56:43

25 table from Intuitive is the highest discount that they 11:56:47

1 have seen for the Xi robot; is that right? 11:56:53

2 A That's what's listed here, yes. 11:56:57

3 Q Do you have any sense of -- of how Valley 11:56:59

4 managed to negotiate the highest discount that ECRI had 11:57:06

5 seen on an Xi robot? 11:57:10

6 A No. 11:57:12

7 Q That section also reads (as read): 11:57:13

8 The quoted dV complete care service 11:57:25

9 contract pricing is consistent with that 11:57:29

10 which is typically reported for the 11:57:31

11 da Vinci Xi single. 11:57:32

12 Do you see that? 11:57:37

13 A Yes. 11:57:37

14 Q So here they're reporting that the quoted 11:57:38

15 price for service is consistent with what ECRI has seen 11:57:39

16 in the offers presented to other customers; is that 11:57:45

17 right? 11:57:51

18 A Yes. 11:57:51

19 Q And the next line reads (as read): 11:57:51

20 Negotiating for a 7.8 service 11:57:57

21 discount will potentially save your 11:58:00

22 facility \$48,000 across the four-year 11:58:02

23 term. 11:58:04

24 Do you see that? 11:58:04

25 A Yes. 11:58:04

1 Q So does that mean that ECRI has seen other 11:58:05
2 customers negotiate discounts on the service fee? 11:58:08

3 A I read this as being 7.8 percent service 11:58:25
4 discount could save us \$48,000 in the four-year term. 11:58:29

5 Q Presumably they're recommending 11:58:36
6 negotiating for an additional discount on the service 11:58:38
7 charge because other facilities, other customers, have 11:58:42
8 done so? Is that fair? 11:58:45

9 A It doesn't say "recommendation," it says 11:58:47
10 negotiating for a service discount could save our 11:58:53
11 facility money over a defined period of time. 11:58:55

12 Q Okay. If you turn forward just one page, 11:58:59
13 the header of that page should read "Service Price 11:59:15
14 Analysis - Intuitive Surgical dV Complete Care." 11:59:18
15 Do you see that? 11:59:26

16 A Yes. 11:59:26

17 Q If you look at the text at the bottom of 11:59:26
18 that paragraph, it reads (as read): 11:59:28

19 However, some member facilities have 11:59:30
20 reported discounts up to 7.8 percent off 11:59:31
21 the purchase of this service, maybe 11:59:34
22 shooting for a 7.8 percent service 11:59:37
23 discount will potentially say \$48,000 11:59:39
24 across the four-year term. 11:59:42
25 Do you see that? 12:00:07

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1 THE REPORTER: Did you answer? I'm sorry 12:00:07
2 if I missed it. 12:00:09
3 THE WITNESS: I said yes. I'm sorry if 12:00:11
4 that wasn't -- 12:00:12
5 BY MR. LANNIN: 12:00:12
6 Q Oh, sorry, I didn't -- I thought you were 12:00:12
7 reading, as well. 12:00:12
8 Okay. So fair -- fair to assume this 12:00:13
9 document suggests or indicates that ECRI -- strike 12:00:14
10 that. Let me start again. 12:00:17
11 This would suggest that some of the other 12:00:17
12 hospitals that report data to ECRI had negotiated for a 12:00:21
13 discount on their service fee from Intuitive? 12:00:26
14 MR. DOMINGUEZ: Objection to form. Calls 12:00:30
15 for speculation. Lacks predicate. 12:00:33
16 THE WITNESS: I read this as some 12:00:36
17 facilities have reported discounts of up to a certain 12:00:39
18 percentage, and that by us negotiating, we could 12:00:42
19 potentially save the money over some of the contract. 12:00:46
20 BY MR. LANNIN: 12:00:52
21 Q Right. 12:00:53
22 This was the point of ECRI, right, I mean 12:00:54
23 so you could know what other facilities were hearing 12:00:56
24 from Intuitive and then bargain using that information? 12:00:59
25 A ECRI is one tool amongst other tools that 12:01:04

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1 we look at to provide context to our decisionmaking. 12:01:07

2 Q Did the fact that, according to ECRI, 12:01:15

3 Valley had negotiated the highest discount it had seen 12:01:18

4 on an Xi robot, give you comfort on proceeding with 12:01:20

5 this deal? 12:01:27

6 A I had confidence in pursuing this deal 12:01:27

7 after I had met with my team and with the supply chain 12:01:34

8 team. 12:01:39

9 Q I imagine they were pretty pleased with 12:01:39

10 themselves if this was -- if they had negotiated the 12:01:42

11 highest discount that ECRI had ever seen? 12:01:44

12 MR. DOMINGUEZ: Objection to form. Calls 12:01:47

13 for speculation. Lacks predicate. 12:01:49

14 THE WITNESS: We have a pretty great team 12:01:51

15 at Valley, so I trust the folks to do their jobs. 12:01:53

16 BY MR. LANNIN: 12:01:55

17 Q Okay. You can close that out. 12:02:12

18 We'll introduce tab four, Paul, which will 12:02:20

19 be Defendant's Exhibit 112. 12:02:25

20 A Okay, I've read it. 12:04:20

21 (Deposition Exhibit 112 was marked 12:04:23

22 for identification and is attached 12:04:23

23 hereto.) 12:04:23

24 BY MR. LANNIN: 12:04:23

25 Q First email on this chain is from you to 12:04:24

1 Mr. Wagner, to the contract that was attached, so it 12:10:49
2 will be -- begin on page four of the PDF, it ends in 12:10:54
3 2062 -- I'm sorry, 20652 on the bottom right. 12:10:58
4 Do you see that? 12:11:05
5 A Yes. 12:11:05
6 Q This is the sales, license, and service 12:11:05
7 agreement for the purchase of the Xi robot; is that 12:11:09
8 right? 12:11:17
9 A Yes. 12:11:17
10 Q And, if you turn to page -- what is page 12:11:17
11 eight of the contract, ending in 20659, you should see 12:11:23
12 Jeannine Grinnell's signature. 12:11:41
13 Do you see that? 12:11:45
14 A Yes. 12:11:45
15 Q This is consistent with what you testified 12:11:45
16 earlier, that it was ultimately Ms. Grinnell's decision 12:11:49
17 to purchase the Xi robot? 12:11:52
18 A She is the final step in authorizing the 12:11:55
19 purchase. 12:11:59
20 Q If you look at two pages after that one, 12:12:02
21 ending in 20661, it's a continuation of what's labeled 12:12:10
22 Exhibit A. 12:12:15
23 Do you see that? 12:12:17
24 A Yes. 12:12:17
25 Q So "Pricing," it indicates the price for 12:12:18

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1 the Xi robot was \$1.7 million. 12:12:25

2 Do you see that? 12:12:34

3 A Yes. 12:12:34

4 Q So, at this point, from the initial quote 12:12:34

5 that you had received earlier in 2018 to now, the price 12:12:41

6 had dropped by \$200,000; is that right? 12:12:45

7 A I believe so. 12:12:51

8 Q If you look at the "Annual Service Fees" 12:12:52

9 column of that table, it indicates the first year of 12:12:58

10 initial term was included in the system purchase price. 12:13:04

11 Do you see that? 12:13:17

12 A Yes. 12:13:17

13 Q And then, for subsequent years, two to 12:13:17

14 five, the price for the service plan was \$149,000 a 12:13:22

15 year. 12:13:26

16 Do you see that? 12:13:27

17 A Yes. 12:13:27

18 Q The -- the last quote we looked at, which 12:13:27

19 was Defendant's Exhibit 56, had indicated or quoted a 12:13:34

20 price of \$154,000 for service in years two through 12:13:39

21 five. 12:13:44

22 Do you have any recollection of how the 12:13:45

23 price was reduced another \$5,000 a year since that last 12:13:47

24 quote? 12:13:52

25 A I don't recall. 12:13:53

1 Q Okay. I'll represent to you we looked and 12:13:54
2 couldn't find a record of it, so I have no document to 12:13:58
3 show you. 12:14:01

4 And someone, presumably, at some point, 12:14:02
5 asked for an additional discount on the service fee? 12:14:04

6 A I -- I -- I don't know if that occurred or 12:14:07
7 not. 12:14:16

8 Q But we can agree that from the last quote 12:14:17
9 to this one, the price had dropped by \$5,000 a year for 12:14:21
10 service in those years? 12:14:27

11 A The price here listed is different than 12:14:30
12 the previous quote, yes. 12:14:35

13 Q Is it possible that the information ECRI 12:14:37
14 conveyed that we discussed earlier, that some 12:14:39
15 facilities had negotiated a discount in the service 12:14:45
16 fee, prompted Valley to ask for a discount on the 12:14:48
17 service fee? 12:14:50

18 A It's possible. 12:14:57

19 Q Do you remember one way or the other 12:14:59
20 whether that happened? 12:15:01

21 A I don't. 12:15:04

22 Q Okay. You can close that document. 12:15:04

23 But you said earlier, Mr. Wagner, you were 12:15:26
24 pleased with the job that your team did in procuring 12:15:29
25 this Xi robot in 2018? 12:15:32

1 I do want to point out what tripped me up 13:10:08
2 there was this valid until, it says November 30, 2018, 13:10:10
3 and the quote date says September 6, 2019. 13:10:14
4 Q I appreciate why you were tripped up, I 13:10:21
5 actually just noticed the same thing and glitched for a 13:10:23
6 moment, as well, but it is attached to an email 13:10:25
7 dated -- 13:10:27
8 A Yeah, I understand. 13:10:28
9 Q -- September 6th -- yeah. 13:10:29
10 Okay. So, on that quote, it also includes 13:10:33
11 a \$25,000 discount on the table upgrade. 13:10:36
12 Do you see that? 13:10:43
13 A Yes. 13:10:43
14 Q And the training that's listed under 13:10:43
15 "Customer Programs," again, the discount will result in 13:10:50
16 those being provided for free; is that right? 13:10:54
17 A Yes. 13:10:56
18 Q If you look on the top of that quote, the 13:10:59
19 first line item is a discount of \$250,000 for trading 13:11:03
20 in the Si. 13:11:11
21 Do you see that? 13:11:13
22 A Yes. 13:11:13
23 Q I think you said earlier in -- in the 13:11:13
24 morning that, to your knowledge, the Si was, in fact, 13:11:18
25 traded in as part of this transaction; is that right? 13:11:21

1	A	For the second Xi robot.	13:11:27
2	Q	Right, the S- -- the Si was traded in as	13:11:29
3		part of the transaction for the second Xi robot; is	13:11:32
4		that right?	13:11:39
5	A	Right.	13:11:39
6	Q	This quote also has the line items for	13:11:39
7		service where the first year is free and years two	13:11:42
8		through five were quoted at \$154,000 a year.	13:11:48
9		Do you see that?	13:12:01
10	A	Yes.	13:12:01
11	Q	And then, under "Additional Information,"	13:12:01
12		it includes four attendees complimentary participants	13:12:02
13		to the dV 360 summit.	13:12:08
14		Do you see that?	13:12:15
15	A	No, where is that located, I'm sorry?	13:12:15
16	Q	In the box --	13:12:24
17	A	Yeah, I see it -- I see it, okay, I see it	13:12:26
18		under "Additional Information."	13:12:27
19	Q	Yeah.	13:12:28
20		Do you know what the DV 360 summit is?	13:12:29
21	A	I vaguely remember some conversations	13:12:35
22		about this, but I don't -- I don't recall any specific	13:12:39
23		details.	13:12:48
24	Q	Do you remember -- strike that.	13:12:48
25		Do you know who would have bargained for	13:12:53

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1 STATE OF CALIFORNIA)

2) ss.

3 COUNTY OF LOS ANGELES)

4 I, Vickie Blair, CSR No. 8940, RPR-CRR, in
5 and for the State of California, do hereby certify:

6 That, prior to being examined, the witness
7 named in the foregoing deposition was by me duly sworn
8 to testify as to the truth, the whole truth, and
9 nothing but the truth;

10 That said deposition was taken before me
11 at the time and place therein set forth, and was taken
12 down by me stenographically and thereafter transcribed
13 via computer-aided transcription under my direction and
14 is a true record of the testimony given;

15 I further certify I am neither counsel
16 for, nor related to, any party to said action, nor
17 interested in the outcome thereof;

18 IN WITNESS WHEREOF, I have hereto
19 subscribed my name this 20th day of October, 2022.

20

21

22

23

24



25 Vickie Blair, CSR No. 8940, RPR-CRR